

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

SADE GREENE,

Plaintiff(s),

v.

EQUIFAX INFORMATION SERVICES,
LLC, et al.,

Defendant(s).

Case No. 2:21-CV-466 JCM (DJA)

ORDER

Presently before the court is defendant Dominion Energy, Inc.’s (“DEI”) motion for judgment on the pleadings. (ECF No. 42). Plaintiff Sade Greene (“Greene”) responded in opposition (ECF No. 43), to which DEI replied (ECF No. 46).

I. Facts

This action arises from an alleged violation of 15 U.S.C. § 1681 *et seq.*, commonly known as the Fair Credit Reporting Act (“FCRA”). In late 2020, Greene disputed her credit report with Equifax, a credit reporting agency (“CRA”) because a line on her credit report incorrectly stated that a debt was “charged off” rather than “paid in full.” (ECF No. 1 at 6). According to Greene, Equifax then informed DEI, which furnished the information, of the dispute. (ECF Nos. 1 at 7; 43 at 2). Greene now alleges that DEI failed to conduct a timely investigation into the dispute and continued to report false and inaccurate information to Equifax, causing her injury in the form of loss of credit, inability to obtain credit, and mental and emotional distress. (ECF No. 1 at 7–8).

Of her twelve alleged causes of action, Greene directs two at DEI—willful violation of the FCRA and negligent violation of the FCRA. (ECF No. 1 at 22–26). DEI answered

1 and alleged fifteen affirmative defenses. (ECF No. 28). DEI now moves for judgment on
2 the pleadings. *See* FED. R. CIV. P. 12(c); (ECF No. 42).

3 **II. Legal Standard**

4 Judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is proper if
5 “taking all the allegations in the pleadings as true, the moving party is entitled to judgment as
6 a matter of law.” *Gregg v. Hawaii, Dep’t of Pub. Safety*, 870 F.3d 883, 887 (9th Cir. 2017)
7 (quotation omitted). A Rule 12(c) motion is “functionally identical to a Rule 12(b)(6)
8 motion.” *Id.* That is, the court “accept[s] all factual allegations in the complaint as true and
9 construe[s] them in the light most favorable to the non-moving party.” *Fleming v. Pickard*,
10 581 F.3d 922, 925 (9th Cir. 2009).

11 Courts have discretion to grant leave to amend in conjunction with 12(c) motions.
12 *Carmen v. San Francisco Unified Sch. Dist.*, 982 F. Supp. 1396, 1401 (N.D. Cal. 1997),
13 *aff’d*, 237 F.3d 1026 (9th Cir. 2001) (citation omitted). Under Rule 15(a), the court should
14 “freely” grant leave to amend “when justice so requires,” and absent “undue delay, bad faith
15 or dilatory motive on the part of the movant, repeated failure to cure deficiencies by
16 amendments . . . undue prejudice to the opposing party . . . futility of the amendment, etc.”
17 *Foman v. Davis*, 371 U.S. 178, 182 (1962). The court should grant leave to amend “even if
18 no request to amend the pleading was made.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.
19 2000) (en banc) (internal quotation marks omitted).

20 **III. Discussion**

21 Under the FCRA, a consumer may sue a “furnisher of information” and recover
22 damages if the furnisher willfully or negligently violated FCRA. 15 U.S.C. §§ 1681n,
23 1681o; *see Syed v. M-I, LLC*, 853 F.3d 492, 503 (9th Cir. 2017). While not defined by the
24 FCRA, courts define a “furnisher of information” as “an entity which transmits information
25 concerning a particular debt owed by a particular consumer to consumer reporting agencies
26 such as Equifax, Experian, MCCA, and Trans Union.” *Shaw v. Experian Info. Sols., Inc.*, 49
27 F. Supp. 3d 702, 704 n.1 (S.D. Cal. 2014). Thus, the FCRA provides a statutory cause of
28 action for Greene to pursue claims against DEI as a furnisher. Yet, as in all cases before this
court, Greene must establish that she has standing to pursue her claims.

1 To establish standing, Greene must show: (i) that she suffered an injury in fact that is
 2 concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the
 3 defendant; and (iii) that the injury would likely be redressed by judicial relief. *TransUnion*
 4 *LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) (citing *Lujan v. Defenders of Wildlife*, 504
 5 U.S. 555, 560–561 (1992)).

6 Specifically, the Ninth Circuit has adopted a two-part test for determining whether
 7 alleged violations of the FCRA are sufficiently concrete: (1) whether the statutory provisions
 8 at issue were established to protect [a plaintiff's] concrete interests (as opposed to purely
 9 procedural rights), and if so, (2) whether the specific procedural violations alleged in this
 10 case actually harm, or present a material risk of harm to, such interests. *Robins v. Spokeo,*
 11 *Inc.*, 867 F.3d 1108, 1113 (9th Cir. 2017). The Supreme Court has explained that a plaintiff
 12 cannot show injury-in-fact unless the “threatened injury [is] certainly impending” rather than
 13 merely speculative. *Clapper v. Amnesty International USA*, 568 U.S. 398, 409 (2013).

14 Here, Greene alleges injuries in the form of loss of credit, loss of the ability to
 15 purchase and benefit from credit, and the mental and emotional pain, anguish, humiliation,
 16 and embarrassment of credit denials. (See ECF No. 1 at 24; 26). These do not show actual
 17 harm or material risk of harm to Greene’s alleged concrete interest because they are
 18 conjectural. Thus, even assuming the court determines that the FCRA’s provisions give
 19 Greene a concrete interest in her report, Greene’s claims do not survive DEI’s motion
 20 because she fails to establish an injury-in-fact.

21 Greene analogizes her case to *Robins*, where the Ninth Circuit held that the plaintiff
 22 sufficiently pled concrete harm. There, the plaintiff alleged that the defendant falsely
 23 reported that the plaintiff was married with children, in his 50s, employed in a professional
 24 or technical field, held a graduate degree, and had a higher income than he actually did. The
 25 plaintiff also alleged that those inaccurate credit reports caused actual harm to his
 26 employment prospects and consequently caused him to suffer from stress and anxiety. See
 27 867 F.3d at 1117; (ECF No. 43 at 22–23).

28 The court is unpersuaded; *Robins* is distinguishable from this matter. First, the
Robins defendant’s errors regarding nearly every aspect of the credit report are much
 different than DEI’s single misleading line on Greene’s credit report. Next, where the

1 *Robins* plaintiff alleged actual harm to employment prospects and mental health, Greene has
 2 pled only conjectural injuries. Finally, Greene does not show any causal link between the
 3 inaccurate information in the credit report and the alleged harm she has suffered.

4 Though the FCRA creates a cause of action, Article III standing still requires that
 5 Greene allege a concrete injury stemming from the statutory violation.¹ *Spokeo, Inc. v.*
 6 *Robins*, 578 U.S. 330, 341 (2016), *as revised* (May 24, 2016).

7 Therefore, Greene does not establish standing for her claims against DEI, and DEI's
 8 motion for judgment on the pleadings is GRANTED.

9 **IV. Conclusion**

10 Accordingly,

11 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that DEI's motion for
 12 judgment on the pleadings (ECF No. 42) be, and the same hereby is, GRANTED. Greene's
 13 claims against DEI are dismissed, without prejudice.

14 Plaintiff has leave to amend her complaint within 21 days of the date of this order.

15 DATED August 10, 2022.

16 
 17 UNITED STATES DISTRICT JUDGE

18
19
20
21
22
23
24
25
26
27
28
 1 ¹ Specific facts such as denied credit applications, or a medical professional's diagnosis
 would be helpful to show a concrete injury.